

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2082

EVANSTON INSURANCE COMPANY,

Plaintiff - Appellee,

v.

MICHELLE GERMANO; DENNIS JACKSON; SHARON JACKSON; JASON
DUNAWAY; LISA DUNAWAY, individually and on behalf of all
others similarly situated,

Defendants - Appellants,

and

HARBOR WALK DEVELOPMENT, LLC; THE PORTER-BLAINE CORP.;
GENESIS GROUP, INC.; WERMERS DEVELOPMENT, INC.; CLARK-
WHITEHILL ENTERPRISES, INC.; VENTURE SUPPLY, INC.; TOBIN
TRADING, INC.; TRADERSCOVE CORP., d/b/a The Henin Group;
PREMIER INTERNATIONAL REALTY, INC., d/b/a The Henin Group;
INTERNATIONAL PROPERTY INVESTMENTS OF CENTRAL FLORIDA, INC.,
d/b/a Henin International Services; HIGGERSON-BUCHANAN,
INC.; M&M CONTRACTING; P&P SKILLED CONTRACTORS; WORK
COMPANY, DRYWALL & PLASTER; JEROME HENIN, individually;
DAVID DANIELS, individually,

Defendants.

NATIONAL ASSOCIATION OF HOME BUILDERS,

Amicus Supporting Appellants.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:10-cv-00312-RAJ-TEM)

Submitted: March 12, 2013

Decided: March 20, 2013

Before SHEDD, DUNCAN, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael Imprevento, BREIT DRESCHER IMPREVENTO & WALKER, P.C., Virginia Beach, Virginia, for Appellants. R. Steven Rawls, Rebecca C. Appelbaum, BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP, Tampa, Florida; Richard A. Saunders, FURNISS DAVIS RASHKIND AND SAUNDERS, P.C., Norfolk, Virginia, for Appellee. David S. Jaffe, NATIONAL ASSOCIATION OF HOME BUILDERS, Washington, D.C., for Amicus Supporting Appellants.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Appellants appeal the district court's order granting summary judgment in favor of Evanston Insurance Company ("Evanston") and declaring that they are not entitled to coverage under the applicable commercial general liability ("CGL") insurance policies for alleged drywall-related damages to their homes and persons. In pertinent part, the CGL policies excluded coverage for any damage stemming from "pollutants," which were defined as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, electromagnetic fields and waste." The district court concluded that, under Virginia law, the sulfuric gases emanating from the Chinese-manufactured drywall were "pollutants" under the language of the policies and therefore declared that Appellants were not entitled to recover any damages stemming therefrom. Appellants filed this appeal, challenging the district court's interpretation of the policies.

While the appeal was pending in this Court, the Supreme Court of Virginia, in response to questions certified to it by this court in another appeal, decided that sulfuric gas released by defective drywall was a "pollutant" under the terms of an identically phrased insurance policy also controlled by Virginia law. TravCo Ins. Co. v. Ward, 736 S.E.2d 321, 328-30 (Va. 2012). Both Evanston and Appellants agree, and we concur,

that the decision in TravCo warrants affirmance of the district court's judgment in this appeal. Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the material before this court and argument will not aid the decisional process.

AFFIRMED